

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EVOX PRODUCTIONS, LLC, a
Delaware limited liability company,

Plaintiff,

vs.

AUTO FIT, INC., an Arizona
corporation.

Defendant.

Case No. 2:23-cv-00702-MWF-SK

Magistrate Judge Steve Kim

**ORDER GRANTING
STIPULATED PROTECTIVE
ORDER**

Trial Date: September 3, 2024

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to

1 file confidential information under seal; Civil Local Rule 79-5 sets forth the
2 procedures that must be followed and the standards that will be applied when a party
3 seeks permission from the court to file material under seal.

4 B. GOOD CAUSE STATEMENT

5 This action is likely to involve trade secrets, customer and pricing lists and
6 other valuable research, development, commercial, financial, technical and/or
7 proprietary information for which special protection from public disclosure and
8 from use for any purpose other than prosecution of this action is warranted. Such
9 confidential and proprietary materials and information consist of, among other
10 things, confidential business or financial information, information regarding
11 confidential business practices, or other confidential research, development, or
12 commercial information (including information implicating privacy rights of third
13 parties), information otherwise generally unavailable to the public, or which may be
14 privileged or otherwise protected from disclosure under state or federal statutes,
15 court rules, case decisions, or common law. Accordingly, to expedite the flow of
16 information, to facilitate the prompt resolution of disputes over confidentiality of
17 discovery materials, to adequately protect information the parties are entitled to keep
18 confidential, to ensure that the parties are permitted reasonably necessary uses of
19 such material in preparation for and in the conduct of trial, to address their handling
20 at the end of the litigation, and serve the ends of justice, a protective order for such
21 information is justified in this matter. It is the intent of the parties that information
22 will not be designated as confidential for tactical reasons and that nothing be so
23 designated without a good faith belief that it has been maintained in a confidential,
24 non-public manner, and there is good cause why it should not be part of the public
25 record of this case.

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1 2. DEFINITIONS

2 2.1 Action: The federal lawsuit entitled Evox Productions, LLC v. Auto
3 Fit, Inc. Case No. 2:23-cv-00702-MWF-SK, pending in the United States District
4 Court for the Central District of California.

5 2.2 Challenging Party: a Party or Non-Party that challenges the
6 designation of information or items under this Order.

7 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
8 how it is generated, stored or maintained) or tangible things that qualify for
9 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
10 the Good Cause Statement.

11 2.4 “CONFIDENTIAL – ATTORNEYS EYES ONLY” information or
12 items: information which belongs to a Designating Party who believes in good faith
13 that the disclosure of such information to another Party or Non-Party would create a
14 substantial risk of serious financial or other injury that cannot be avoided by less
15 restrictive means.

16 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
17 their support staff).

18 2.6 Designating Party: a Party or Non-Party that designates information or
19 items that it produces in disclosures or in responses to discovery as
20 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY.”

21 2.7 Disclosure or Discovery Material: all items or information, regardless
22 of the medium or manner in which it is generated, stored, or maintained (including,
23 among other things, testimony, transcripts, and tangible things), that are produced or
24 generated in disclosures or responses to discovery in this matter.

25 2.8 Expert: a person with specialized knowledge or experience in a matter
26 to the litigation who has been retained by a Party or its counsel to serve as an expert
27 witness or as a consultant in this Action.

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1 2.9 House Counsel: attorneys who are employees of a party to this Action.
 2 House Counsel does not include Outside Counsel of Record or any other outside
 3 counsel.

4 2.10 Non-Party: any natural person, partnership, corporation, association, or
 5 other legal entity not named as a Party to this action.

6 2.11 Outside Counsel of Record: attorneys who are not employees of a
 7 party to this Action but are retained to represent or advise a party to this Action and
 8 have appeared in this Action on behalf of that party or are affiliated with a law firm
 9 which has appeared on behalf of that party, and includes support staff.

10 2.12 Party: any party to this Action, including all of its officers, directors,
 11 employees, consultants, retained experts, and Outside Counsel of Record (and their
 12 support staffs).

13 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
 14 Discovery Material in this Action.

15 2.14 Professional Vendors: persons or entities that provide litigation
 16 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
 17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 18 and their employees and subcontractors.

19 2.15 Protected Material: any Disclosure or Discovery Material that is
 20 designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES
 21 ONLY.”

22 2.16 Receiving Party: a Party that receives Disclosure or Discovery
 23 Material from a Producing Party.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only
 26 Protected Material (as defined above), but also (1) any information copied or
 27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 28 compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected Material.

2 Any use of Protected Material at trial shall be governed by the orders of the
3 trial judge. This Order does not govern the use of Protected Material at trial.

4 4. DURATION

5 Even after final disposition of this litigation, the confidentiality obligations
6 imposed by this Order shall remain in effect until a Designating Party agrees
7 otherwise in writing or a court order otherwise directs. Final disposition shall be
8 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
9 or without prejudice; and (2) final judgment herein after the completion and
10 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
11 including the time limits for filing any motions or applications for extension of time
12 pursuant to applicable law.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection.
15 Each Party or Non-Party that designates information or items for protection under
16 this Order must take care to limit any such designation to specific material that
17 qualifies under the appropriate standards. The Designating Party must designate for
18 protection only those parts of material, documents, items, or oral or written
19 communications that qualify so that other portions of the material, documents,
20 items, or communications for which protection is not warranted are not swept
21 unjustifiably within the ambit of this Order.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations
23 that are shown to be clearly unjustified or that have been made for an improper
24 purpose (e.g., to unnecessarily encumber the case development process or to impose
25 unnecessary expenses and burdens on other parties) may expose the Designating
26 Party to sanctions.

27 If it comes to a Designating Party's attention that information or items that it
28 designated for protection do not qualify for protection, that Designating Party must

1 promptly notify all other Parties that it is withdrawing the inapplicable designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in
3 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
4 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
5 under this Order must be clearly so designated before the material is disclosed or
6 produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (e.g., paper or
9 electronic documents, but excluding transcripts of depositions or other
10 pretrial or trial proceedings), that the Producing Party affix at a
11 minimum, the legend “CONFIDENTIAL” or “CONFIDENTIAL-
12 ATTORNEYS EYES ONLY” (hereinafter “CONFIDENTIAL legend”), to
13 each page that contains protected material. If only a portion or portions of the
14 material on a page qualifies for protection, the Producing Party also must
15 clearly identify the protected portion(s) (e.g., by making appropriate
16 markings in the margins).

17 A Party or Non-Party that makes original documents available for
18 inspection need not designate them for protection until after the inspecting
19 Party has indicated which documents it would like copied and produced.
20 During the inspection and before the designation, all of the material made
21 available for inspection shall be deemed “CONFIDENTIAL” or
22 “CONFIDENTIAL- ATTORNEYS EYES ONLY” in accordance with the
23 designation. After the inspecting Party has identified the documents it wants
24 copied and produced, the Producing Party must determine which documents,
25 or portions thereof, qualify for protection under this Order. Then, before
26 producing the specified documents, the Producing Party must affix the
27 “CONFIDENTIAL legend” to each page that contains Protected Material. If
28 only a portion or portions of the material on a page qualifies for protection,

1 the Producing Party also must clearly identify the protected portion(s) (e.g.,
2 by making appropriate markings in the margins).

3 (b) for testimony given in depositions that the Designating Party
4 identify the Disclosure or Discovery Material on the record, before the
5 close of the deposition all protected testimony.

6 (c) for information produced in some form other than documentary
7 and for any other tangible items, that the Producing Party affix in a prominent
8 place on the exterior of the container or containers in which the information is
9 stored the legend “CONFIDENTIAL” or “CONFIDENTIAL- ATTORNEYS
10 EYES ONLY.” If only a portion or portions of the information
11 warrants protection, the Producing Party, to the extent practicable, shall
12 identify the protected portion(s).

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
14 failure to designate qualified information or items does not, standing alone, waive
15 the Designating Party’s right to secure protection under this Order for such material.
16 Upon timely correction of a designation, the Receiving Party must make reasonable
17 efforts to assure that the material is treated in accordance with the provisions of this
18 Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
21 designation of confidentiality at any time that is consistent with the Court’s
22 Scheduling Order.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
24 resolution process under Local Rule 37.1 et seq.

25 6.3 The burden of persuasion in any such challenge proceeding shall be on
26 the Designating Party. Frivolous challenges, and those made for an improper
27 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
28 parties) may expose the Challenging Party to sanctions. Unless the Designating

1 Party has waived or withdrawn the confidentiality designation, all parties shall
 2 continue to afford the material in question the level of protection to which it is
 3 entitled under the Producing Party's designation until the Court rules on the
 4 challenge.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 7 disclosed or produced by another Party or by a Non-Party in connection with this
 8 Action only for prosecuting, defending, or attempting to settle this Action. Such
 9 Protected Material may be disclosed only to the categories of persons and under the
 10 conditions described in this Order. When the Action has been terminated, a
 11 Receiving Party must comply with the provisions of section 13 below (FINAL
 12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a
 14 location and in a secure manner that ensures that access is limited to the persons
 15 authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 17 otherwise ordered by the court or permitted in writing by the Designating Party, a
 18 Receiving Party may disclose any information or item designated
 19 "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this Action,
 21 as well as employees of said Outside Counsel of Record to whom it is
 22 reasonably necessary to disclose the information for this Action;

23 (b) the officers, directors, and employees (including House
 24 Counsel) of the Receiving Party to whom disclosure is reasonably necessary
 25 for this Action;

26 (c) Experts (as defined in this Order) of the Receiving Party to
 27 whom disclosure is reasonably necessary for this Action and who have
 28 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material maybe separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7.3. Disclosure of “CONFIDENTIAL – ATTORNEYS EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL – ATTORNEYS EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the court and its personnel;

(d) court reporters and their staff;

(e) the or a custodian or other person who otherwise possessed or knew the information;

(f) during their depositions, witnesses who are the author or recipient of a document containing the information, and attorneys for such witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material maybe separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(g) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY,” that Party must:

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1 (a) promptly notify in writing the Designating Party. Such
2 notification shall include a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or
4 order to issue in the other litigation that some or all of the material
5 covered by the subpoena or order is subject to this Protective Order. Such
6 notification shall include a copy of this Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought
8 to be pursued by the Designating Party whose Protected Material may be
9 affected. If the Designating Party timely seeks a protective order, the Party
10 served with the subpoena or court order shall not produce any information
11 designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL –
12 ATTORNEYS EYES ONLY” before a determination by the court from
13 which the subpoena or order issued, unless the Party has obtained the
14 Designating Party’s permission. The Designating Party shall bear the burden
15 and expense of seeking protection in that court of its confidential material and
16 nothing in these provisions should be construed as authorizing or encouraging
17 a Receiving Party in this Action to disobey a lawful directive from another
18 court.

19 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
20 PRODUCED IN THIS LITIGATION

21 (a) The terms of this Order are applicable to information produced
22 by a Non-Party in this Action and designated as “CONFIDENTIAL” or
23 “CONFIDENTIAL – ATTORNEYS EYES ONLY.” Such information
24 produced by Non-Parties in connection with this litigation is protected
25 by the remedies and relief provided by this Order. Nothing in these
26 provisions should be construed as prohibiting a Non-Party from seeking
27 additional protections.

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(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or

1 persons to whom unauthorized disclosures were made of all the terms of this Order,
 2 and (d) request such person or persons to execute the “Acknowledgment and
 3 Agreement to Be Bound” that is attached hereto as Exhibit A.

4 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 5 PROTECTED MATERIAL

6 When a Producing Party gives notice to Receiving Parties that certain
 7 inadvertently produced material is subject to a claim of privilege or other protection,
 8 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
 9 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
 10 may be established in an e-discovery order that provides for production without
 11 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
 12 as the parties reach an agreement on the effect of disclosure of a communication or
 13 information covered by the attorney-client privilege or work product protection, the
 14 parties may incorporate their agreement in the stipulated protective order submitted
 15 to the court.

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 18 person to seek its modification by the Court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 20 Protective Order no Party waives any right it otherwise would have to object
 21 to disclosing or producing any information or item on any ground not
 22 addressed in this Stipulated Protective Order. Similarly, no Party waives any
 23 right to object on any ground to use in evidence of any of the material covered
 24 by this Protective Order.

25 12.3 Filing Protected Material. A Party that seeks to file under seal any
 26 Protected Material must comply with Civil Local Rule 79-5. Protected
 27 Material may only be filed under seal pursuant to a court order authorizing
 28 the sealing of the specific Protected Material at issue. If a Party's request to

1 file Protected Material under seal is denied by the court, then the Receiving
 2 Party may file the information in the public record unless otherwise
 3 instructed by the court.

4 13. FINAL DISPOSITION

5 After the final disposition of this Action, as defined in paragraph 4, within 60
 6 days of a written request by the Designating Party, each Receiving Party must return
 7 all Protected Material to the Producing Party or destroy such material. As used in
 8 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
 9 summaries, and any other format reproducing or capturing any of the Protected
 10 Material. Whether the Protected Material is returned or destroyed, the Receiving
 11 Party must submit a written certification to the Producing Party (and, if not the same
 12 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
 13 (by category, where appropriate) all the Protected Material that was returned or
 14 destroyed and (2) affirms that the Receiving Party has not retained any copies,
 15 abstracts, compilations, summaries or any other format reproducing or capturing any
 16 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 17 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
 18 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
 19 reports, attorney work product, and consultant and expert work product, even if such
 20 materials contain Protected Material. Any such archival copies that contain or
 21 constitute Protected Material remain subject to this Protective Order as set forth in
 22 Section 4 (DURATION).

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1 14. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

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5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6
7 DATED January 31, 2024

8
9 /s/ David D. Kim
10 Attorneys for Plaintiff

11
12 DATED: January 31, 2024

13
14 /s/ Robert Collins
15 Attorneys for Defendant

16 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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18 DATED: January 31, 2024

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21 HONORABLE STEVE KIM
22 UNITED STATES MAGISTRATE JUDGE

Attestation

Pursuant to Civil Local Rule 5-4.3.4(a)(2)(i), the filer attests that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

DATED: January 31, 2024

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Robert M. Collins

Robert M. Collins

Attorneys for Defendant Auto Fit, Inc.

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective
 Order that was issued by the United States District Court for the Central District of
 California on [date] in the case of Evbox Productions, LLC v. Auto Fit, Inc. Case
 No. 2:23-cv-00702-MWF-SK. I agree to comply with and to be bound by all the
 terms of this Stipulated Protective Order and I understand and acknowledge that
 failure to so comply could expose me to sanctions and punishment in the nature of
 contempt. I solemnly promise that I will not disclose in any manner any information
 or item that is subject to this Stipulated Protective Order to any person or entity
 except in strict compliance with the provisions of this Order. I further agree to
 submit to the jurisdiction of the United States District Court for the Central District
 of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print
 or type full name] of _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated
 Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____